GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute.—Industrial Dispute between the workmen and the management of West's Patent Press Co., Ltd., Hubli.

Award of the Labour Court, Hubli published.

Read the following papers :

(1) Letter No. 839—70-71, dated 16th December 1970, from Sri W. K. Kulkarni, Presiding Officer, Labour Court, Hubli.

BEFORE THE LABOUR COURT, HUBLI HUBLI.

Reference (ID) LCH Claim No. 10—1969

Presiding Officer

Sri W. K. Kulkarni, B.A. (HONS.), LL.B.
Dated 16th December 1970

Claimant—

Sri S. V. Banigol, 39/2, Christain Colony, Near Power House, Hubli.

Respondent-

The Management of West's Patent Press, Co., Ltd., Hubli.

Represented by — Sri V. R. Deshpande, Advocate

Represented by : — Sri V. N. Apte, Advocate

1. This is a reference made by the State Government under section 10(1)(c) of the I.D. Act 1947 which will be referred to hereinafter as the Act. The following points of

dispute have been referred by the State Government to this Court.

(1) Is the Management of West's Patent Press Company Limited, Hubli justified in dismissing the services of Sri S. V. Banigol.

(2) If not is the said employee (Sri S. V. Banigol) entitled to re-instatement with back wages and continuity of service or to any other relief ?

2. After the reference was received notices were issued to both the parties and the claimant has filed a claim statement stating as following :

3. That he was appointed on 1st March 1956 as a clerk in the West's Patent Press Co., Ltd., Hubli Branch which is the Respondent. The Local branch Manager of the Respondent was removed from the service on 20th March 1965. Consequently the claimant was appointed as acting Branch Manager with effect from that date. The Head Office of the Respondent Company is at Panipat in Punjab and the General Manager's Office is situated there. In the last week of May 1967, the General Manager visited Hubli and had some inspection. On 2nd June 1967 he asked the claimant some questions regarding which a charge sheet was later presented. The claimant contends that on 3rd June 1967, the General Manager asked the claimant to admit those charges. But he refused. So on 3rd June 1967 the General Manager gave a charge sheet to the claimant and also suspended him with effect from that date. Subsequently an order of dismissal of the claimant was passed on 30th September 1967. The claimant contends that only a charge-sheet was presented to him and no domestic enquiry as such was held, that no papers were furnished to him and so the order of dismissal is illegal and unjust and opposed to Principle of Natural Justice. The claimant therefore has prayed for seting aside the order of dismissal and re-instatement with back wages.

4. The Respondent has filed a counter contending as following. The Respondent admits that the claimant was working as a Manager in the Respondent Factory, Hubli Branch and a charge sheet was issued to him. In the written statement various charges preferred against the claimant are set out, to which I shall refer later on. The Respondent contends that no explanation was given by the claimant after the presentation of the charge-sheet and so the claimant was rightly dismissed for mis-conduct. That the enquiry held against the claimant was *bona fide* and according to Principles of Natural justice and on the evidence before him the General Manager came to the conclusion that charges were proved and so he dismissed him. If for any reason, the Court finds that no proper enquiry was held, then the Respondent should be allowed to lead evidence to prove the charges against the claimant. Further the Respondent says that the management having lost confidence in the claimant due to his negligent, dishonest and fradulent conduct, his re-instatement with back wages will cause the Respondent an incalculable loss and risk and the Respondent therefore prays that in any event, the Court be pleased to reject the claim of re-instatement. Thus the Respondent says that the order of the dismissal of the claimant was justified and the reference should be answered in favour of the Respondent.

5. A priliminary point was raised that the claimant was not at all a "Worker" as defined in the Act. My Predecessor after hearing both sides passed an order on 23rd March 1970 holding that the claimant was a worker and this Court has jurisdiction to adjudicate on this Industrial Dispute.

6. Thereafter I heard the matter on merits.

7. The claimant gave an application before me that the enquiry held was not proper and rules of natural justice were not followed. The claimant further contended that in fact no domestic enquiry was held and so the order of the

dismissal should be set aside. On 13th July 1970 I passed an order in the order-sheet holding that the domestic enquiry held was not proper and it was not according to Law. However since the Respondent asked for an opportunity to lead evidence on the charges in this Court, I gave him that opportunity and I had to myself take up the responsibility of deciding whether the charges levelled were proved or not. Both the sides laid evidence before me on the various charges contained in the charge-sheet given to the claimant and I proceed to consider the same. A true copy of the charge-sheet is at Ex. W-7. I wish to make it clear that the domestic enquiry held by the Respondent was not proper and according to Law and rules of natural justice were violated. However he has right to lead evidence on the charges and prove the same. There are as many 10 charges contained in the Ex. W-7. Some of the charges are not pressed by Sri V. N. Apte, the learned Advocate for the Respondent. However he contends that the other charges are proved. Even if some of the charges only are proved the order of the dismissal has to be upheld.

8. It has to be noted that the claimant was acting Branch Manager, in charge of Hubli Branch. The Head office of the Respondent Company is at Panipat in Punjab. So the Branch Manager at Hubli had on him the heavy responsibility and duty to guard the interests of the Repondent Press. It is on this background that we have to consider the charges.

9. The first head of the charge reads as follows :—

> "That you brought lot of Sandal Wood sleepers from somewhere and on detecting it by the Police and Forest Department you burnt all those sleepers in our Boiler secretly."

10. This charge is denied by the claimant Sri Banigol who has examined himself, as WW-1. There is a Boiler in the Respondent Press and some wood was required as fuel for the Boiler. It is the case of the Respondent that the claimant Sri Banigol had smuggaled some Sandle Wood and

when the Police and the Forest Department came to know if it, he got it burnt in the Boiler of the Respondent Press. The Claimant admits that he was staying in one of the quarters in the compound of the Press. I shall refer to the evidence of several witnesses on this charge.

11. Chandappa is MW-1. He is working as a clerk under one Shirur Cotton Merchant at Hubli for the last 20 years and Shirur used to get his cotton pressed in the Respondent's Press since last 20 years. Chandappa MW-1 has to supervise this pressing work of Shirur's Cotton and so he was staying in one of the quarters in the compound of the Respondent Factory. The quarters occupied by the claimant were just adjoining that of Chandappa. Chandappa says that about 4 years back some Sandal Wood was burnt in the Boiler of the Respondent's Factory and he came to know if it on account of its smell. It is common knowledge that Sandal wood if burnt emits good smell. Chandappa says that this sandle wood was about 2-3 cart loads. It was suggested to this witness in cross-examination that he is on enemical terms with claimant because the claimant had got him vacated from the quarters of the Respondent. The witness admitted that the claimant got him vacated from the quarters about 3½ years back and he occupied the same again 4 months back. He denies that his relations with claimant are strained. It may be that because Shirur had no cotton to press in the Factory or there was no accomodation in the Factory that the witness was asked to vacate the quarters by the claimant. That was the normal function of the claimant and there need not be any bad relation on account of it.

12. Then the next witness on this charge is MW-2 Hussain Sab, who says that he is working as a Peon in the Respondent Press for the last 46 years, that in 1966 some Sandle Wood was burnt in the Boiler of the Respondent Press, and claimant got it burnt. It was possible for this peon to know that the claimant Banigol was responsible for this burning. No doubt witness admits in cross that at the

time of burning the Sandle Wood, Banigol was in the Office and the distance between the office and the Boiler is about half a furlong. But the witness also knows that the Banigol got the sandal wood burnt. Being a peon of long standing in the Respondent Company it was possible for him to know it. Banigol need not be present near the Boiler when the Sandal Wood was burnt.

13. Then the third witness on this charge is Imamsab MW-3 who is working as a Engine Driver in the Respondent Press for the last 25 years. He also says that in 1966 some Sandle Wood was burnt in the Boiler of the Press. This witness himself admits that he put the sandle wood in the Boiler at the instance of Sri Banigol.

14. Then MW-4 Gudusab who is working as Fireman in the Press says that Banigol got burnt some sandle wood in the boiler and then he was present. Thus these four witness say that Banigol got the sandal wood burnt in the Boiler. It is true that they are working in the Respondent Factory now. Sri V. R. Deshpande, the Learned Advocate for the claimant, contended that these are interested witnesses, I do not think so. Merely because they are working in the Respondent Factory, they have no animosity against the claimant. I accept their evidence and hold that this charge has been proved. No doubt the evidence shows that the fuel wood was brought to the Factory in truck. Some witnesses say that wood was brought in carts. Thus regarding the evidence as a whole there is no contradiction and Sandal Wood must have been brought in the carts and Fuel Wood in truck.

15. Then charges No. 2, 3 and 7 have to be considered together. It appears there is a Bungalow for the residence of the General Manager to stay whenever he comes here and there were some furnitures and carpets in the said Bungalow, and the company wanted to sell them away. It appears the General Manager had instructed the claimant to sell the articles excepting the carpet. But carpet was also sold along with the other articles by the claimant to one Manavi.

The case of the Respondent is that while so selling the claimant apperently showed that he had sold one Boiler without lid and carpet to Manavi. But in collusion with Manavi he had himself mis-appropriated these two articles. There is satisfactory evidence on record to prove this fact. MW-5 Bhimarao the present Manager of the Respondent Company has spoken on this charge. The list of the articles sold to Manavi is marked as Ex. M1. Manavi has signed this list, stating that he had received all these articles. It appears that the articles were sold to Rs. 4,700. Subsequently out of these articles two articles namely one Hessien carpet and a Boiler without lid were found in the house of the claimant and General Manager on coming to know of it got them produced from the claimant and he handed them over to the custody of present Manager Bhimarao MW-5. The claimant admits in his evidence that at the instance of the General Manager he produced these two articles and they are now with Bhimarao. His case is that he has subsequently purchased these two articles from Manavi for Rs. 150 and he has produced a receipt purporting to have been signed by Manavi in this beshalf. It is marked as Exhibit W-7. It is dated 8th October 1966. I have no hesitation in coming to the conclusion that this receipt is subsequently got from Manavi to have the claimant. If the claimant had really purchased these two articles from Manavi, he would have produced this receipt before the General Manager when the claimant produced these two articles before General Manager. Banigol was not able to give any explanation as to why he did not produce this receipt then before General Manager. The Respondent contends and, in my opinion rightly, that this receipt Ex. W-7 was not at all in existence when the two articles were produced by the claimant from his house before the General Manager and subsequently this document is created with the help of Manavi. I have no doubt that Manavi is colluding with the claimant. Manavi is a long standing customary of the Respondent. So the claimant must be knowing him. The Respondent had cited Manavi as his witness. Though he (Manavi) received the Registered

summons, Manavi did not appear before this Court to give evidence, nor did the claimant got him to prove the receipt. From this conduct of Manavi I think he is colluding with the claimant and the receipt Ex. W-7 has been later prepared, in an attempt to save the claimant. When these two articles were sized by the General Manager from the house of the claimant, what was expected from the claimant was to show this receipt to the General Manager if his explanation was true. The General Manager had no animosity against the claimant. The very fact that the receipt was not then produced and he is producing it now and Manavi is not coming forth to give evidence in this behalf, and all these circumstances would show that the claimant conspired with Manavi while selling articles to retain these two articles (carpet and Noiler without Lid) for himself and in pursuance of that conspiracy he retained these two articles which really belongs to the Company. Thus I have no doubt that the claimant has in effect misappropriated these two articles of the Company. The claimant was the Branch Manager in whom the company and the Head Office had kept implicit trust and faith. The man who has committed breach of such trust has no long any right to remain in the service of the Respondent. The Company was perfectly justified in dismissing him from the service. Ex. W-1 is a letter dated 10th November 1966 written by the claimant to General Manager. The 'mat' referred to in this letter is the carpet. The claimant represented to the General Manager that no body was prepared to purchase the furniture without the mat. The reply by the General Manager Ex. W-2 dated 26th November 1966 would show that the Company did not want to sale the mat. Still the claimant showed the mat as sold and himself took it. Of course the claimant has credited in the accounts of the Company all the money he received from Manavi. But then by conspiracy he has retained these two articles for hilmself without actually selling them but making only a show of their sale. So I hold this charge proved. On this ground alone, let alone other charges, the Company is justified in dismissing the claimant.

Charge 4: There is no evidence on this charge and it is not pressed by Sri V. N. Apte, the learned Advocate for the Respondent.

16. Then I come to the charge No. 5 which reads as following:

> "That you allowed an outsider to reside inside one of our office rooms continuously for four time months without our authority or sanction and you realised some rent from the man and kept it with you."

17. The case of the Respondent is that the claimant allowed one Amar Shetty who was working as a clerk in the State Bank to stay in one of the rooms in the Press for six months and recovered rent from him and took it himself. MW-1 Chandappa, stated that some clerk working in the State Bank used to stay in the Press for about six months about 4½ years back. In cross-examination the witness stated that the name of that clerk was Amar Shetty. That he was alone and had his bedding in the room.

18. Then MW-2 Hussen Sab who was Peon in the Press also says that Amar Shetty was staying in one of the rooms of the Press for about six months. That he used to make the room dirty by throwing cigarettes-pieces, etc., and when the witness questioned him as to why he was making the office dirty, Amar Shetty replied that he was not staying there gratis. This would show that Amar Shetty had paid some consideration. Obviously the Branch Manager being incharge, Amar Shetty must have stayed there with his consent and paid some consideration to him.

19. The claimant admits in his evidence that Amar Shetty was a friend of his son and also a friend of one Sangappa who had work in the press. The claimant says that Amar Shetty used to come to the Press some times to meet his son and Sangappa. But from the evidence of MW-1

and MW-2 I am satisfied that Amar Shetty was staying in one of the rooms of the Press for about six months with the consent of the claimant whom must have received some consideration.

20. *Charge No.* 6.—This charge relates to the fact that though the mat was not directed to be sold by the General Manager, the claimant still sold it. The charge is proved so far as the mat is concerned.

21. Then I come to the charge No. 8 which reads as following :

> "That you did your personal business inside the Factory compound, of making chairs, etc., with the help of company's workers without our knowledge."

22. It is the case of the Respondent that the claimant used to get some furniture made in the Compound of his quarters with the help of the persons employed in the Press. The claimant admits that he has son by name Venkatesh who is joint with him. It is the case of the respondent that the claimant and his son Venkatesh used to get prepared chairs by bending iron bars and knitting them with plastic and in this process one Jaganath who was working as a maistry in the Respondent Press and also his son Krishna who was employed in the Respondent Press, were made to work. Sri Banigol admits that his son was getting some furniture made in the compound of his quarters and Krishna used to work as a cooli some times for that. But he says that his son used to employ Krishna whenever Krishna was not employed in the Factory. On the other hand Chandappa MW-1 says that claimant was getting prepared for himself iron barred chairs with plastic sheets and one Jaganath Maistry and his son Krishna used to do this work and both these were employed in the Respondent Press.

23. Similarly Hussan Sab, MW-2 says that claimant used to get plastic chairs prepared in his compound from

Jaganath Maistry and his son Krishna who were both employed in the Respondent Press. Admittedly these chairs were the private property of the claimant. The witness further says that both Jaganath and his son have now left Hubli.

24. Then Gudusab MW-4 stated that one Krishna was manufacturing steel chairs at the instance of his father and Banigol used to get those chairs prepared and this went on for about a year. Nothing is elicited in the cros-examination of these witnesses to shatter their evidence. From this evidence I am satisfied that Sri Banigol used to get his private business namely manufacturing steel chairs done with the help of persons employed in the Press namely Jaganath Mainstry and his son. I hold this head of the charge proved.

25. Charge No. 9 and 10 are not pressed. My above discussions will go to show that some of the serious charges are proved against the claimant. The company was therefore justified in coming to the conclusion that such a man should not be kept in its service. The order of dismissal of the claimant is therefore justified. Sri V. R. Despande the learned Advocate for the claimant has referred me to Short notes of recent decisions, Item No. 249 Mysore Law Journal, Mysore Law Journal 1970. Part II, issue of 30th August 1970. In that case Their Lordships have held that even in a domesetic enquiry mere suspicion should not be allowed to take the place of proof. In the present case it is not a question of mere suspicion, but there is satisfactory evidence in proof of some of the serious charges. Some of the charges which I have held proved, are serious enough. Hence my award.

AWARD

The dismissal of the claimant by the Respondent was justified. The claimant is therefore not entitled to any relief on this reference. There will be no order as to costs of this Proceeding.

W. K. KULKARNI,
Presiding Officer,
Labour Court, Hubli.

"TRUE COPY"

W. K. KULKARNI,
Presiding Officer,
Labour Court, Hubli.

ORDER

Bangalore, dated 5th January 1971

S.O. 153.—WHEREAS by State Government Order No. FCL 814 LLD 69, dated 21st February 1970 the Industrial Dispute between the Workmen and the Management of West's Patent Press Co., Ltd., Hubli was referred to the Labour Court, Hubli for adjudication.

AND, WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette.*

[No. FCL 291 LLA 70].

By Order and in the name of the Governor of Mysore,

ANIRUDHA DESAI,
Under Secretary to Government,
Food, Civil Supplies and Labour Department.